IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24/09/2004

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THE HONOURABLE MR. JUSTICE A.K.RAJAN

W.P.No. 37451 of 2002

P.Muthiah .. Petitioner

-Vs-

1. Khadi and Village Industries Board
Tamil Nadu
Represented by its
Chief Executive Officer
Kuralagam
Chennai

2. The Assistant Director of Khadi
and Village Industries Board
Tiruchirapalli .. Respondents

For Petitioner : Mr.M.Ravi

For Respondent: ----
Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus as stated therein.

:ORDER
The petitioner has filed the above writ petition praying to issue a writ of certiorarified mandamus to call for the records of the second respondent relating to Proc.No.9280/96/E1 dated 25.3.2000 and of the first respondent in Na.Ka.No.74035/C4(1)/96 dated 08.5.2003, to quash the same and to issue consequential directions to the respondents herein to disburse the pensionary and retirement benefits to the petitioner with 18% interest thereon forthwith consequent to his retirement on 31.01.2000.

2. The petitioner was employed as Assistant in the respondent Board and was subsequently, promoted as Assistant Khadi Officer and he was permitted to retire from service on 31.01.2000 on attaining the age of superannuation. Though a show cause notice was issued to him on 10.7.1998 and reply was given on 15.3.1999, no orders were passed till the date of retirement and he was permitted to retire. Thereafter, a charge memo was issued to him on 25.3.2000. After the retirement, the impugned order has been passed with a direction to recover a sum of of Rs.20,000/- from the pensionary benefits of the petitioner. This order is impugned in this petition.

3. Learned counsel for the petitioner submitted that the petitioner was permitted to retire from service without any condition and as such, the order of retirement does not show that the retirement of the petitioner was without prejudice to the pending proceedings. After retirement of a person, no departmental proceedings can be initiated against him except in accordance with the Tamil Nadu Pension Rules, 19 78 (hereinafter referred to as 'the Rules'). He referred to Rule 9 (2)(b) of the Rules, which reads as follows:

"(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,--

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution."

He also referred to Rule 9(6)(b). Referring to Rule 9(2)(b) of the Rules, the learned counsel submitted that the departmental enquiry can be initiated even after retirement only with respect to certain acts committed within four years prior to the date of retirement. In this case, the alleged misdeed had taken place in the year 1981-82 and 1994-95, that is, more than five years have lapsed on the date of retirement. Therefore, no departmental proceedings can be initiated for such misdeeds in view of Rule 9(2)(b) of the Rules. Learned counsel further submitted that the departmental proceedings deemed to have been instituted on the date when the charge memo is issued as per Rule 9(6)(b) of the Rules. Admittedly, the charge memo was issued only on 25.3.2000, i.e., after retirement. In case of initiation of departmental proceedings after retirement of a Government servant, even if it is otherwise permissible, prior sanction of the Government should be obtained. But in this case no sanction has been obtained from the Government. The learned counsel contended that for all these reasons, the departmental proceedings initiated against the petitioner is not legally sustainable and the impugned order is liable to be quashed.

4. The learned Government Advocate appearing for the respondents submitted that the matter relates to minor penalty and the authorities wanted to impose only minor penalty as it is reflected in the show cause notice. Even in the counter affidavit, it is stated that the charges were framed under Regulation 34(a) of the Tamil Nadu Khadi and Village Industries Board Service Regulations and the same refers only to imposition of minor penalty. It is submitted that no charge memo need be issued for imposing minor penalty. Therefor, only minor penalty was intended to be imposed. Therefore, in this case, issuance of charge memo does not in any way affect the departmental proceedings and hence, the order is valid and the Writ Petition deserves to be dismissed.

5. It is true that for imposing minor penalties, no charge memo need be issued. In the Service Rules and Regulations, it is not specifically mentioned for which category minor penalties shall be imposed and for which category, major penalties shall be imposed. The discretion is with the officer, who initiates departmental proceedings, to determine the imposition of penalties depending upon the nature of the case. It is not obligatory to

issue charge memo even for imposition of minor penalties. Once charge memo is issued, it is deemed to be for imposition of major penalties. The very fact that charge memo was issued would show that the intention of the authorities was to impose major penalty. As per Rule 9(6)(b) of the Rules, only when the charge memo is issued, departmental proceedings is deemed to have been instituted. In this case, admittedly, charge memo was issued after the retirement of the petitioner (on 25.3.2000). For instituting departmental proceedings against a retired Government servant, prior sanction has to be obtained from the Government. Admittedly, in this case, no prior sanction has been obtained from the Government. Therefore, entire proceedings are vitiated and hence, impugned order is liable to be set aside as it is illegal.

6. In the result, the writ petition is allowed and impugned order is set aside. No costs. Consequently, W.M.P. No.56239 of 2002 is closed. No costs.

Index : Yes
Internet : Yes

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To

1. The Chief Executive Officer
Khadi and Village Industries Board
Kuralagam Chennai

2. The Assistant Director
Khadi and Village Industries Board
Tiruchirapalli